

Jamb, Inc. d/b/a Bi-Lo Foods and Local 427, Hotel Employees and Restaurant Employees International Union, AFL-CIO, Petitioner. Case 19-RC-12874

November 30, 1994

DECISION AND ORDER REMANDING

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

After an election held on July 14, 1994,¹ pursuant to a Stipulated Election Agreement, the Employer filed timely objections that were received by the Regional Office on July 22. The Regional Office then wrote the Employer to advise him that evidence in support of his objections was due in the Regional Office by close of business on July 29 under the provisions of Section 102.69(a) of the Board's Rules and Regulations. On July 28, the Employer mailed evidence in support of his objections to the Regional Office. That mailing, however, did not arrive in the Regional Office until August 1. Noting that the Employer had neither requested nor received an extension of time for submitting the evidence, the Regional Director recommended overruling the Employer's objections for lack of timeliness. He relied on *Craftmatic Comfort Mfg. Corp.*,² and a line of cases holding that time limits in the Board's Rules and Regulations are to be strictly applied.³

¹ All dates occur in 1994 unless otherwise noted.

² 299 NLRB 514 (1990).

³ *Koons Ford*, 308 NLRB 1067 (1992); *Public Storage*, 295 NLRB 1034 (1989); and *Star Video Entertainment L.P.*, 290 NLRB 1010 (1988).

The Employer filed an exception to the Regional Director's report and recommendation. The exception stressed that the Employer had sent evidence supporting its objections by certified mail the day before the due date. The Petitioner filed a response in support of the Regional Director's report and recommendation.

We find that the Employer's exception has merit.⁴ The Regional Director failed to consider that the Board, as announced in its decision in *John I. Haas, Inc.*,⁵ revised Section 102.111(b) of the Rules and Regulations to provide that evidence submitted in support of election objections postmarked no later than the day before the due date will be considered timely. See generally *Goody's Family Clothing*, 308 NLRB 181 (1992), applying Section 102.111 to the submission of evidence in support of objections. Thus, because the Employer's submission of evidence in support of his objections was timely, even under a strict application of the Board's Rules and Regulations, we remand this case to the Regional Director to consider the merits of the Employer's objections.⁶

ORDER

It is ordered that the Employer's evidence in support of its objections be accepted and that the above-entitled matter be remanded to the Regional Director for Region 19 for full consideration of these objections and the supporting evidence.

⁴ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

⁵ 301 NLRB 300 (1991).

⁶ Member Devaney agrees with his colleagues that the Employer's submission of evidence in support of its objections was timely. He also finds the result here generally consistent with the approach he has taken in his dissents in *Goody's*, *Koons*, and *Public Storage*, *supra*.